

JOINT APPENDIX

Supreme Court, U. S.

FILED

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MICHAEL RADAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1680

— • —
THE STATE OF MICHIGAN,
Petitioner,

v

GARY DEFILLIPPO,
Respondent.

— • —
ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MICHIGAN

PETITION FOR CERTIORARI FILED MAY 24, 1977

CERTIORARI GRANTED OCTOBER 2, 1978

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No. 77-1680

THE STATE OF MICHIGAN,
Petitioner.

v

GARY DEFILLIPPO,
Respondent.

DOCKET ENTRIES

19/6

September 24. Defendant arraigned on warrant for possession of phenylclidene in Detroit Recorder's Court.

September 30. Preliminary examination held; defendant bound over for trial in Detroit Recorder's Court.

November 23. Motion to quash the information and suppress the evidence heard and denied by trial judge.

December 7. Stay of proceedings to file interlocutory appeal granted by trial judge.

1977

June 2. Michigan Court of Appeals grants Application for interlocutory appeal, time for filing halved.

August 2. Motion by Detroit Branch of American Civil Liberties Union to file brief *amicus curiae* on behalf of defendant granted by Court of Appeals.

September 30. Motion of Detroit Bar Association to file brief *amicus curiae* on behalf of defendant granted by Court of Appeals.

December 6. Court of Appeals issues opinion, reverses denial of motion to quash and suppress.

1978

May 1. Supreme Court of Michigan denies leave to appeal.

May 24. Petitioner's Petition for Writ of Certiorari docketed in United States Supreme Court.

October 2. Petitioner's Petition for Writ of Certiorari granted by United States Supreme Court.

(State of Michigan
In the Recorder's Court for the City of Detroit)

The People of the State of Michigan, Plaintiffs, vs
Gary Joseph DeFillippo, Defendant. File No. 76-07619.

EXAMINATION

Proceedings had and testimony taken in the above-entitled cause, before the HONORABLE DONALD L. HOBSON, Acting Judge of the Recorder's Court for the City of Detroit, Michigan, on September 30, 1976.

APPEARANCES: MS. JEANNE MARSON, Assistant Prosecuting Attorney, Appearing on behalf of the People. MR. THOMAS LOBE, Attorney-At-Law, Appearing on behalf of the Defendant.

PRELIMINARY EXAMINATION TRANSCRIPT

Detroit, Michigan
September 30, 1976.

PROCEEDINGS

(2) The Clerk: Case Number 76-07619, People versus Gary Joseph Defillippo, charged with the offense of possessing phensydedine.

Mr. Lobe: Defense is ready, your Honor.

GREGORY BEDNARK having been called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Ms. Marson:

Q. State your name and occupation, sir.

A. Gregory Bednark, Police, City of Detroit.

Q. Officer, were you on duty at about 10 o'clock in the evening on September 14th, 1976?

A. I was.

Q. At that time were you in the area of Rosemary and Dickerson in Detroit?

A. I was.

Q. How did you happen to be in that area?

(3) A. We received a radio run to investigate two people in the alley by the garage that appeared drunk.

Q. All right. You got to that alley, and what did you find?

A. As we pulled in, and as we were coming north on Dickerson, I observed two people by the alley.

Q. Do you see either of those people in Court today?

A. Yes, I do.

Q. Point him or them out.

A. Mr. Defillippo, sitting in the booth.

Ms. Marson: Let the record indicate the witness has pointed to and identified the defendant.

Q. (By Ms. Marson) What were these people doing when you first saw them?

A. As we pulled in the alley, the young man, the defendant, was standing by the rear of the garage, and the young lady was in the process of taking her pants down.

Q. Okay. What happened then?

A. I asked them what they were doing, and the young lady said she had to piss.

Q. What happened then?

A. I asked the gentleman for his identification. He (4) said — he told me that he was Sergeant Mash. I asked him —

Q. Indicating that he was a member of the Police Department?

A. That is correct. I asked him what his badge number was, and he said two something, I didn't catch the last number.

Q. What happened then?

A. I asked him again for identification, and he said, "I work for Sergeant Mash."

Q. What happened then?

A. At that time the female approached the car. I was still sitting in the driver's side of the car. I asked her for identification, and she opened the wallet and began tossing the contents of her wallet into the — in the car window on top of me, and all over the car.

At that time I exited the car and told her to pick up the stuff, and the young man would have to come into the station, because he didn't have any identification.

Q. What happened then?

A. I advised the young lady she would have to come (5) into the station for disorderly conduct, because there was a strong odor of alcohol about her.

Q. What happened then?

A. When I advised the young lady she would have to come into the station, she became loud and boisterous, hysterical, wouldn't let us investigate her purse. She grabbed the defendant and began kissing and hugging him.

Q. What happened then?

A. As we separated the two and I patted down the defendant, and he had what felt like marijuana on his right shirt pocket, and a package of cigarettes.

Mr. Lobe: Just a minute. Somebody just coughed.

Q. (By Ms. Marson) Start all over again. What did you do?

A. She was loud and boisterous and carrying on with the young man, and didn't want to go with us to the station.

So she was grabbing a hold of him, and we attempted to separate the two of them, and patted the defendant down. My partner was attempting to investigate the young lady's purse.

Q. All right. What developed during the pat down of the defendant?

(6) A. I felt some — what I believed to be marijuana underneath his — in his pocket, in his right breast pocket. There was a carton (sic) of cigarettes in the left breast pocket.

Q. And —

A. Because of her wild state, and not knowing if he would try to throw it away or destroy the evidence, I confiscated it at the scene and conveyed both, after we got her in handcuffs, to the station.

Q. Okay. What happened then?

A. At the station we took the marijuana, placed it on evidence, and inside the cigarette pack was one tinfoil packet. —

Q. Did you place that into evidence?

A. — Of suspected narcotics. Yes.

Q. Did you later put the tinfoil packet and its contents into a lock-sealed folder?

A. Yes, I did.

Q. What was the number of that lock-sealed folder?

A. I have to look at the P.C.R. Lock-sealed folder 100430.

Ms. Marson: Defense counsel informs me, your Honor, that for purposes (7) of examination only, he will waive the production of the evidence itself in Court today, and would stipulate that if the chemist were here, he would testify that he examined the contents of lock-sealed folder 100430, and found it to consist of .13 grams of phencyclidine.

The Court: Is that correct?

Ms. Marson: I have no further questions.

The Court: Is that correct, counsel?

Mr. Lobe: That is correct. For examination only, your Honor.

The Court: You may cross examine.

Cross Examination

By Mr. Lobe:

Q. Officer, what time did you receive a radio run?

A. Approximately 10:00 p.m.

Q. Were you alone?

A. No, I wasn't.

Q. Were you in uniform?

A. Yes, I was.

(8) Q. Who else was with you?

A. Donald Holifield. H-O-L-I-F-I-E-L-D.

Q. How long did it take you from the time you got the run until you got to the alley, if you know?

A. I would just be guessing, five minutes or so.

Q. Not more than 15?

A. No, I wouldn't think so.

Q. You testified that the woman appeared to be drunk. Did the man appear to be drunk?

A. I didn't say she appeared to be drunk. I just noticed a strong odor of alcohol. I didn't have her take a breath test.

Q. Did you notice a strong odor of alcohol on this gentleman?

A. No.

Q. Did he appear to slur his words?

A. No.

Q. Did he appear to be speaking plain and clear?

A. Yes, I believe so.

Q. Didn't he say he knew Sergeant Mash?

A. At first he said he was Sergeant Mash, and after we asked for his badge, he said he knew Sergeant Mash.

Q. Was your partner standing there when this happened?

(9) A. No, he was sitting on the passenger side in the car. I was in the driver's seat.

Q. Where was the gentleman?

A. Right at the driver's side window, leaning in the window with his elbows on the door.

Q. I see. When you asked him for identification, he did not have any identification?

A. That is correct.

Q. Is that why you arrested him?

A. I told him he would have to come into the station because he didn't have any identification.

Q. Pursuant to another power, it is illegal not to have identification?

A. City Ordinance.

Q. Did he appear to you to be under the age of 17?

A. I had no idea how old he was. After he told me he was Sergeant Mash, I didn't know what to believe.

Q. Then he was under arrest pursuant to the City Ordinance?

A. Yes.

The Court: He will have to answer yes or no.

The Witness: Yes.

Q. (By Mr. Lobe) Then you patted him down?

(10) A. That is correct.

Q. You felt what appeared to be marijuana?

A. That's correct.

Q. What does marijuana feel like, Officer?

A. Through my six and a half years on the job, you feel a plastic bag, and sensory perception of feeling the plastic bag inside the pocket, with the stems, leaves, seeds —

Q. What kind of pocket was it, Officer?

A. His right breast pocket.

Q. What kind of shirt, Officer?

A. It was a light — I don't know what the material — cotton maybe, light cotton.

Q. Could it be a blue denim levi jacket like blue jeans, but in a shirt?

A. No, it wasn't like blue jeans.

Q. Was it a blue denim? Was it a blue shirt?

A. Yes.

Q. It had a flap on the pocket?

A. That's correct.

Q. Over the flap you felt something soft?

A. That is partially correct.

Q. Okay. You believed it was marijuana?

A. That's correct.

(11) Q. Then what did you do next?

A. I was talking to the lady at the same time. I was asking her for identification.

Q. You looked in her purse?

A. Not at that time.

Q. You attempted to look in her purse?

A. She took the wallet out of her purse.

Q. What did you do with the wallet?

A. I didn't do anything. She started throwing I.D., and fling it into the car window.

Q. You were out of the car?

A. No, I was in the car at that time.

Q. You were in the car while you were talking to the woman, while you were patting him down?

A. No, not while I was patting him down. Sorry, I misunderstood.

Q. So you were out of the car?

A. When I patted him down, yes.

Q. Where was your partner?

A. Talking to the young lady.

Q. While your partner was talking to the young lady, you were patting him down, you were talking to the young lady also, is that your testimony?

A. We were then in the process of putting the handcuffs (12) on him and taking him in, getting her restrained.

Q. You were in the process of putting the handcuffs on him?

A. That's correct.

Q. For not having identification?

A. And placing him in the scout car, yes.

Q. Do you customarily handcuff everyone that you find on the street who does not produce sufficient identification?

Mr. Koldys: Objection to what is customary. All that is at issue is this factual situation.

Mr. Lobe: Your Honor, this is required under the law of People versus Charles D. Walker, to be legally admissible (sic) evidence. What I'm asking the officer is most material.

The Court: Ask him the question.

Q. (By Mr. Lobe) Is it your custom to handcuff anybody that goes in the car?

A. Everyone that is a prisoner, yes.

Q. He was under arrest for not having identification?

Mr. Koldys: Objection. Asked and answered, at least nine or ten times.

(13) The Court: I have heard it enough, counsel. Ask the next question.

Q. (By Mr. Lobe) Was he under arrest for having marijuana in his pocket?

A. We advised him after he identified himself as Sergeant Mash that he would have to come into the station.

Q. Then he corrected himself by saying he knew Sergeant Mash, isn't that true?

A. Corrected or whatever.

Q. He did tell you that, didn't he?

A. He told us that he worked for Sergeant Mash, after that.

Q. Do you know Sergeant Mash?

A. Not then, I did not.

Q. But you know him now?

A. Now I do.

Q. When he got to the station what did you do with him?

A. Took him to the cell block to be printed and processed.

Q. As part of that process did you advise him of his rights to post reasonable bail?

A. I don't know. It was handled by the clerk.

(14) Q. So you don't know what he was advised of?

Mr. Koldys: Immaterial. The search occurred on the street. It is an entirely irrelevant matter.

Argument

Q. (By Mr. Lobe) Where was the P.C.P. found, Officer?

A. Inside a Marlboro packet of cigarettes.

Q. Did he give you the cigarettes? Did he give you the pack?

A. It was in his left breast pocket.

Q. So when you patted him down you also felt that, is that correct?

A. I felt the cigarette pack.

Q. Then you took the cigarettes out of his pocket, is that correct?

A. That is correct.

Q. On the scene you looked into the pack?

A. I believe so, yes.

Q. Then you saw a tinfoil, is that correct?

A. That is correct.

Q. Then you looked into the tinfoil?

A. No.

Q. You didn't open the tinfoil until you got to the station?

A. That's correct.

(15) The Court: Anything further, counsel?

Mr. Lobe: No, Your Honor. Not of this witness.

Mr. Koldys: Step down, sir.

(Witness excused.)

Mr. Koldys: Move to admit the evidence and bind the defendant over on the charges contained in the complaint and warrant.

Mr. Lobe: Your Honor, I move —

The Court: You may respond, counsel.

Mr. Lobe: Your Honor, I move that the case be dismissed, the evidence suppressed, and the complaint and warrant quashed. This is the result of an illegal search and seizure.

Number one, if he was arrested under that City Ordinance, he had the right under *People versus Dixon* to post reasonable bail.

If the officer felt that he felt what appeared to be marijuana, I would (16) submit to your Honor that; number one that it is inherently incredible, because we don't know what is in a person's pocket.

Number two; *Terry* against *Ohio*, *Sibron* against *New York*, which is even more on point than *Terry*, an officer has a right to pat a person down when he is in fear of his safety. He didn't notice anything remotely like a weapon. He felt a soft pack.

It is no longer a frisk. It is a full blown search.

When he looked into that packet of cigarettes and saw that tinfoil, that was also a search.

I would cite to you two cases which I feel would be depositive of this matter, one called *People against Le Grange*, 40 Mich. Ap. Another case called *People against Harry Williams*, 63 Mich. Ap.

Your Honor, in that case there is an investigation. The case arose out (17) of an interlocutory appeal from *Oakland County*.

The officers were called to the scene by a manager of the hotel who saw a suspicious individual in the parking lot, much like these officers were called to the scene.

While the officer was talking to the man in the parked car, he asked him for identification. The man pulled a wallet out of his pocket. While the man was fumbling through the wallet the Officer then noticed that he had what appeared to be a license, because the corner of the license was sticking out of the wallet. Yet, the man had told him earlier just before that he did not have a license with him, but he had other identification.

The officer then grabbed the wallet, looked into the wallet, found some credit cards. The case arose from possessing stolen credit cards.

The Court of Appeals said that it was an improper search and seizure. Whether or not that wallet was taken by that officer, (18) it was taken without probable cause, but at best mere suspicion, that it did not come under the stop and frisk exception to the Fourth Amendment, and from all of the laws of this State, and under the Constitution, it was an illegal search.

Your Honor, it is directly on point, and I think it was an illegal search.

The Court: Any comments?

Mr. Koldys: No, your Honor. I think the chain of events shows that the officers' action was reasonable at all points.

Mr. Lobe: Your Honor, I respond that the reasonable test of the Fourth Amendment, and Article One of Section eleven of our Constitution, requires first that if the officer does not have a warrant, it is presumed that the search is illegal with some certain and specified narrow exceptions.

I don't believe that this officer's testimony here shows specified and narrow exceptions.

(19) He testified to a sixth sense after being on the police force for six and a half years. I submit that this officer's not omniscient, and that is not a reasonable and articulate suspicion under stop and frisk.

The Court: Mr. Lobe, the Court has heard your argument, but under the circumstances of this particular case I can see where it would appear to be reasonable for the officer to do what he did.

I will bind him over. You may bring this before the pre-trial Judge on motion, if you wish to proceed further.

Your pre-trial Judge is Judge Thomas L. Poindexter.
I will continue the \$1,000 personal bond.

(Hearing concluded.)

Certificate

State of Michigan
County of Wayne—ss.

I HEREBY CERTIFY that I reported stenographically the foregoing proceedings at the time and place hereinbefore set forth: That the same was thereafter reduced to typewritten form under my supervision: And that this is a full, true and correct transcription of my Stenotype notes.

/s/ Joanne C. Tobian,
Official Court Reporter.

State of Michigan,
October 9, 1976.

**ORDER GRANTING
INTERLOCUTORY APPEAL**

(State of Michigan
Court of Appeals)

(Filed June 2, 1977)

The People of the State of Michigan, Plaintiffs, vs
Gary Joseph DeFillippo, Defendant. File No. 76-07619.

At A Session Of The Court Of Appeals Of The State
Of Michigan, Held at the Court of Appeals in the City
of Grand Rapids on the 2nd day of June in the year of
our Lord one thousand nine hundred and
seventy-seven.

Present the Honorable Donald E. Holbrook, Jr.,
Presiding Judge. Robert B. Burns, Thomas M. Burns,
Judges.

In this cause an application for leave to appeal and a
motion for immediate consideration are filed by
defendant-appellant, and an answer in opposition
thereto having been filed, and due consideration
thereof having been had by the Court,

IT IS ORDERED that the motion for immediate
consideration be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the application be,
and the same is hereby GRANTED on condition that all
acts required by subrules 803.2 and 803.5 be performed
within 10 days after the date of the Clerk's certification
of this order.

IT IS FURTHER ORDERED that in accordance with
GCR 1963, 816.6 the time for taking all steps on appeal
required under the rules is hereby REDUCED by
one-half and no extension of time shall be had except
upon order of the Court of Appeals.

State of Michigan—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals
of the State of Michigan, do hereby certify that the
foregoing is a true and correct copy of an order entered
in said court in said cause; that I have compared the
same with the original, and that it is a true transcript
therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my
hand and affixed the seal of said Court of Appeals at
Lansing this 2nd day of June in the year of our Lord
one thousand nine hundred and seventy-seven.

/s/ Ronald L. Dzierbicki
Clerk

OPINION

(State of Michigan
Court of Appeals)

(Filed December 6, 1977)

The People of the State of Michigan, Plaintiff-Appellee, v Gary De Fillippo, Defendant-Appellant.

BEFORE: T. M. Burns, P.J., and R. B. Burns and
W. R. Brown, JJ.

R.B. BURNS, J.

Defendant was charged with possession of a controlled substance, phencyclidene. MCLA 335.341(4) (b); MSA 18.1070 (41) (4) (b). Prior to trial he moved to suppress evidence obtained in a search of his person and to quash the information. The motion was denied and we granted an interlocutory appeal.

The facts indicate that two Detroit police officers received a radio call to investigate two allegedly drunken persons in an alley. Upon their arrival at the alley, the officers found defendant and a companion. The intoxicated companion was arrested for disorderly conduct. Defendant did not appear intoxicated, but when he was asked for his identification, he replied that he was Sergeant Mash, a Detroit police officer. When asked for his badge number, defendant replied that he was working for Sergeant Mash. Defendant was then arrested for failure to produce identification, handcuffed, and searched. Marijuana was found immediately, and phencyclidene was found later at the station in a pack of defendant's cigarettes.

It is defendant's theory that the Detroit ordinance which allows a police officer to arrest an individual for failure to produce identification is unconstitutional, that

the search incident to his arrest was therefore unlawful, and that the evidence must be suppressed. It is plaintiff's theory that we should avoid the issue of the constitutionality of the ordinance, because even if the ordinance is unconstitutional, the police officer's good faith reliance thereon would preclude application of the exclusionary rule. The purpose of the exclusionary rule is to deter unlawful police conduct, and "where official action was pursued in complete good faith, the deterrence rationale loses much of its force", *Michigan v Tucker*, 417 US 433, 447; 94 S Ct 2357; 41 L Ed 2d 182, 194 (1974). See *United States v Carden*, 529 F2d 443 (CA 5, 1976), *United States v Kilgen*, 445 F2d 287 (CA 5, 1971).

We cannot subscribe to plaintiff's theory. If, as defendant argues, the ordinance is void for vagueness, subject to arbitrary and discriminatory application, and used as a pretext for unlawful search and seizure, suppression of evidence obtained pursuant to a search incident to arrest thereon will deter unlawful police conduct, and the exclusionary rule should therefore apply. See *Powell v Stone*, 507 F2d 93, 98 (CA 9, 1974), *rev'd on other grounds*, 428 US 465; 96 S Ct 3037; 49 L Ed 2d 1067 (1976), *United States ex rel. Newsome v Malcolm*, 492 F2d 1166, 1174-1175 (CA 2, 1974), *Hall v United States*, 459 F2d 831, 841-842 (DC Cir, 1972).

At the time of defendant's arrest, Detroit City Code § 39-1-52.3 read as follows:

"When a police officer has reasonable cause to believe that the behavior of an individual warrants further investigation for criminal activity, the officer may stop and question such person. It shall be unlawful for any person stopped pursuant to this section to refuse to

identify himself, and to produce verifiable documents or other evidence of such identification. In the event that such person is unable to provide reasonable evidence of his true identity the police officer may transport him to the nearest precinct in order to ascertain his identity."

The ordinance has been slightly amended since defendant's arrest, but there are no significant changes.¹

The ordinance is void for vagueness.

First, it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden * * *." *United States v Harriss*, 347 US 612, 617; 74 S Ct 808; 98 L Ed 989, 996 (1954), see *Papachristou v City of Jacksonville*, 405 US 156; 92 S Ct 839; 31 L Ed 2d 140 (1972). An innocent citizen cannot generally know when a police officer has reasonable cause to believe that his behavior warrants further investigation for criminal activity, and therefore cannot know when refusal to identify himself will be a crime. Nor does the ordinance define which of today's numerous forms of identification will satisfy a police officer's desire for verifiable documents. This lack of specificity "encourages arbitrary and erratic arrests", *Papachristou v City of Jacksonville*, *supra*, by delegating to police officers the determination of who must be able to produce what kind of identification.

¹ The amendment, Detroit Ordinance No 158-H (October 19, 1976) makes clear that refusal to identify oneself is a crime. This was implicit in the ordinance as it read at the time of defendant's arrest, since the ordinance authorized arrest for failure to identify oneself.

Second, the ordinance seeks to make criminal conduct which is innocent. *Papachristou v City of Jacksonville*, *supra*, *Detroit v Sanchez*, 18 Mich App 399, 401-402; 171 NW2d 452, 453 (1969).

"Personal liberty, which is guaranteed to every citizen under our Constitution and laws, consists of the right of locomotion, — to go where one pleases, and when, and to do that which may lead to one's business or pleasure, only so far restrained as the rights of others may make it necessary for the welfare of all other citizens. One may travel along the public highways or in public places; and while conducting themselves in a decent and orderly manner, disturbing no other, and interfering with the rights of no other citizens, there, they will be protected under the law, not only in their persons, but in their safe conduct. The Constitution and the laws are framed for the public good and the protection of all citizens, from the highest to the lowest; and no one may be restrained of his liberty, unless he has transgressed some law. Any law which would place the keeping and safe conduct of another in the hands of even a conservator of the peace, unless for some breach of the peace committed in his presence, or upon suspicion of felony, would be most oppressive and unjust, and destroy all the rights which our Constitution guarantees." *Pinkerton v Verberg*, 78 Mich 573, 584; 44 NW 579, 582-583 (1889).

While police may under certain circumstances intrude upon a person's privacy by stopping him and asking questions, *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), there can be no requirement that the person answer. "[W]hile the police have a right to request citizens to answer voluntarily questions concerning unsolved crimes they have no right to compel them to answer." *Davis v Mississippi*, 394 US 721, 727n.6, 89 S Ct 1394, 1397n.6, 22 L Ed 2d 676, 681n.6 (1973). Accord, *Terry v Ohio*, *supra*, at 34, 20 L Ed 2d at 913 (White, J., concurring).

Third, the ordinance undercuts the probable cause standard of the Fourth Amendment. *Papachristou v City of Jacksonville*, *supra*; *People v Berck*, 32 NY2d 567, 300 NE2d 411, 347 NYS 2d 33 (1973). A police officer may make only a limited search of a person he has stopped on suspicion, and then only if he has reason to believe the person is armed and dangerous. *Terry v Ohio*, *supra*. The Detroit ordinance sanctions full searches on suspicion, without regard for dangerousness, of those persons whose activities fall within the vague parameters of the ordinance.

Since the ordinance is void, the search incident to arrest for violation of the ordinance was unlawful. The evidence should have been suppressed and the information quashed.

Reversed.

ORDER DENYING APPLICATION FOR LEAVE TO APPEAL

(State of Michigan
In The Supreme Court)

(Filed May 1, 1978)

The People of the State of Michigan, Plaintiffs, vs
Gary Joseph DeFillippo, Defendant. File No. 76-07619.

At A Session Of The Supreme Court Of The State Of Michigan, Held at the Supreme Court Room, in the City of Lansing, on the 28th day of April in the year of our Lord one thousand nine hundred and seventy-eight.

Present the Honorable Thomas Giles Kavanagh, Chief Justice. G. Mennen Williams, Charles L. Levin, Mary S. Coleman, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., Associate Justices.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

State of Michigan—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 1st day of May in the year of our Lord one thousand nine hundred and seventy-eight.

/s/ Corbin R. Davis
Deputy Clerk